

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1670

To revise and streamline the acquisition laws of the Federal Government, to reorganize the mechanisms for resolving Federal procurement disputes, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1995

Mr. CLINGER (for himself, Mr. SPENCE, Mr. HORN, Mr. ZELIFF, Mr. BLUTE, Mr. DAVIS, Mr. SCARBOROUGH, Mr. LEWIS of California, Mr. TATE, Mr. TIAHRT, Mr. FLANAGAN, Mr. BASS, and Mr. CHAMBLISS) introduced the following bill; which was referred to the Committee on Government Reform and Oversight, and in addition to the Committees on National Security and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To revise and streamline the acquisition laws of the Federal Government, to reorganize the mechanisms for resolving Federal procurement disputes, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Federal Acquisition  
5   Reform Act of 1995”.

**1 SEC. 2. TABLE OF CONTENTS.**

**2 The table of contents for this Act is as follows:**

- Sec. 1. Short title.
- Sec. 2. Table of contents.

**TITLE I—COMPETITION**

- Sec. 101. Improvement of competition requirements.
- Sec. 102. Definition relating to competition requirements.
- Sec. 103. Contract solicitation amendments.
- Sec. 104. Preaward debriefings.
- Sec. 105. Contract types.
- Sec. 106. Contractor performance.

**TITLE II—COMMERCIAL ITEMS**

- Sec. 201. Commercial item exception to requirement for cost or pricing data and information limitations.
- Sec. 202. Application of simplified procedures to commercial items.
- Sec. 203. Amendment to definition of commercial items.
- Sec. 204. Inapplicability of cost accounting standards to contracts and sub-contracts for commercial items.

**TITLE III—ADDITIONAL REFORM PROVISIONS**

- Sec. 301. Government reliance on the private sector.
- Sec. 302. Elimination of certain certification requirements.
- Sec. 303. Amendment to commencement and expiration of authority to conduct certain tests of procurement procedures.
- Sec. 304. International competitiveness.
- Sec. 305. Procurement integrity.
- Sec. 306. Further acquisition streamlining provisions.

**TITLE IV—STREAMLINING OF DISPUTE RESOLUTION**

Subtitle A—General Provisions

- Sec. 401. Definitions.

Subtitle B—Establishment of the United States Board of Contract Appeals

- Sec. 411. Establishment.
- Sec. 412. Membership.
- Sec. 413. Chairman.
- Sec. 414. Rulemaking authority.
- Sec. 415. Litigation authority.
- Sec. 416. Seal of Board.
- Sec. 417. Authorization of appropriations.

Subtitle C—Functions of United States Board of Contract Appeals

- Sec. 421. Alternative dispute resolution services.
- Sec. 422. Alternative dispute resolution of disputes and protests submitted to Board.
- Sec. 423. Contract disputes.
- Sec. 424. Protests.

Sec. 425. Applicability to contracts for commercial items.

Subtitle D—Repeal of Other Statutes Authorizing Administrative Protests

Sec. 431. Repeals.

Subtitle E—Transfers and Transitional, Savings, and Conforming Provisions

Sec. 441. Transfer and allocation of appropriations and personnel.

Sec. 442. Terminations and savings provisions.

Sec. 443. Contract dispute authority of Board.

Sec. 444. References to agency boards of contract appeals.

Sec. 445. Conforming amendments.

Subtitle F—Effective Date; Interim Appointment and Rules

Sec. 451. Effective date.

Sec. 452. Interim appointment.

Sec. 453. Interim rules.

## **TITLE V—EFFECTIVE DATES AND IMPLEMENTATION**

Sec. 501. Effective date and applicability.

Sec. 502. Implementing regulations.

# **TITLE I—COMPETITION**

## **SEC. 101. IMPROVEMENT OF COMPETITION REQUIREMENTS.**

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2304 of title 10, United States Code, is amended to read as follows:

### **“§ 2304. Contracts: competition requirements**

“(a) MAXIMUM PRACTICABLE COMPETITION.—Except as provided in subsections (b), (c), and (e) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

“(1) shall obtain maximum practicable competition through the use of competitive procedures consistent with the need to efficiently fulfill the Govern-

1       ment’s requirements in accordance with this chapter  
2       and the Federal Acquisition Regulation; and

3           “(2) shall use the competitive procedure or  
4       combination of competitive procedures that is best  
5       suited under the circumstances of the procurement.

6       “(b) EXCLUSION OF PARTICULAR SOURCE.—The  
7       head of an agency may provide for the procurement of  
8       property or services covered by this chapter using competi-  
9       tive procedures but excluding a particular source in order  
10      to establish or maintain an alternative source or sources  
11      of supply for that property or service. The Federal Acqui-  
12      sition Regulation shall set forth the circumstances under  
13      which a particular source may be excluded pursuant to  
14      this subsection.

15      “(c) EXCLUSION OF CONCERNS OTHER THAN SMALL  
16      BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—  
17      The head of an agency may provide for the procurement  
18      of property or services covered by this section using com-  
19      petitive procedures, but excluding concerns other than  
20      small business concerns in furtherance of sections 9 and  
21      15 of the Small Business Act (15 U.S.C. 638, 644) and  
22      concerns other than small business concerns, historically  
23      Black colleges and universities, and minority institutions  
24      in furtherance of section 2323 of this title.

1       “(d) PROCEDURES OTHER THAN COMPETITIVE PRO-  
2 CEDURES.—Procedures other than competitive procedures  
3 may be used for purchasing property and services only  
4 when the use of competitive procedures is not feasible or  
5 appropriate. Each procurement using procedures other  
6 than competitive procedures (other than a procurement  
7 for commercial items or a procurement in an amount not  
8 greater than the simplified acquisition threshold) shall be  
9 justified in writing and approved in accordance with the  
10 Federal Acquisition Regulation.

11       “(e) SIMPLIFIED PROCEDURES.—(1) In order to pro-  
12 mote efficiency and economy in contracting and to avoid  
13 unnecessary burdens for agencies and contractors, the  
14 Federal Acquisition Regulation shall provide for special  
15 simplified procedures for purchases of property and serv-  
16 ices for amounts not greater than the simplified acqui-  
17 sition threshold.

18       “(2) A proposed purchase or contract for an amount  
19 above the simplified acquisition threshold may not be di-  
20 vided into several purchases or contracts for lesser  
21 amounts in order to use the simplified procedures required  
22 by paragraph (1).

23       “(3) In using simplified procedures, the head of an  
24 agency shall ensure that competition is obtained to the ex-

1 tent practicable consistent with the particular Government  
2 requirement.

3 “(f) CERTAIN CONTRACTS.—For the purposes of the  
4 following laws, purchases or contracts awarded after using  
5 procedures other than sealed-bid procedures shall be treat-  
6 ed as if they were made with sealed-bid procedures:

7 “(1) The Walsh-Healey Act (41 U.S.C. 35–45).

8 “(2) The Act entitled “An Act relating to the  
9 rate of wages for laborers and mechanics employed  
10 on public buildings of the United States and the  
11 District of Columbia by contractors and subcontrac-  
12 tors, and for other purposes”, approved March 3,  
13 1931 (commonly referred to as the “Davis-Bacon  
14 Act”) (40 U.S.C. 276a–276a–5).”.

15 (2) Chapter 137 of title 10, United States Code, is  
16 amended by inserting before section 2305 a new section—

17 (A) the designation and heading for which is as  
18 follows:

19 “§ 2304f. Merit-based selection”;

20 and

21 (B) the text of which consists of subsection (j)  
22 of section 2304 of such title, as in effect on the day  
23 before the date of the enactment of this Act, modi-  
24 fied—

1 (i) by striking out the subsection designa-  
2 tion and the subsection heading;

3 (ii) in paragraphs (2)(A), (3), and (4), by  
4 striking out “subsection” and inserting in lieu  
5 thereof “section” each place it appears;

6 (iii) in paragraph (2)(C), by striking out  
7 “paragraph (1)” and inserting in lieu thereof  
8 “subsection (a)”;

9 (iv) by redesignating paragraphs (1), (2),  
10 (3), and (4) as subsections (a), (b), (c), and  
11 (d), respectively; and

12 (v) in subsection (b) (as so redesignated),  
13 by redesignating subparagraphs (A), (B), and  
14 (C) as paragraphs (1), (2), and (3), respec-  
15 tively.

16 (3) The table of sections at the beginning of such  
17 chapter is amended by inserting before the item relating  
18 to section 2305 the following new item:

“2304f. Merit-based selection.”.

19 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section  
20 303 of the Federal Property and Administrative Services  
21 Act of 1949 (41 U.S.C. 253) is amended to read as fol-  
22 lows:

23 **“SEC. 303. CONTRACTS: COMPETITION REQUIREMENTS.**

24 **“(a) MAXIMUM PRACTICABLE COMPETITION.—Ex-**  
25 **cept as provided in subsections (b), (c), and (e) and except**

1 in the case of procurement procedures otherwise expressly  
2 authorized by statute, an executive agency in conducting  
3 a procurement for property or services—

4 “(1) shall obtain maximum practicable competi-  
5 tion through the use of competitive procedures con-  
6 sistent with the need to efficiently fulfill the Govern-  
7 ment’s requirements in accordance with this chapter  
8 and the Federal Acquisition Regulation; and

9 “(2) shall use the competitive procedure or  
10 combination of competitive procedures that is best  
11 suited under the circumstances of the procurement.

12 “(b) EXCLUSION OF PARTICULAR SOURCE.—An ex-  
13 ecutive agency may provide for the procurement of prop-  
14 erty or services covered by this chapter using competitive  
15 procedures but excluding a particular source in order to  
16 establish or maintain an alternative source or sources of  
17 supply for that property or service. The Federal Acquisi-  
18 tion Regulation shall set forth the circumstances under  
19 which a particular source may be excluded pursuant to  
20 this subsection.

21 “(c) EXCLUSION OF CONCERNS OTHER THAN SMALL  
22 BUSINESS CONCERNS AND CERTAIN OTHER ENTITIES.—  
23 An executive agency may provide for the procurement of  
24 property or services covered by this section using competi-  
25 tive procedures, but excluding concerns other than small



1 business concerns in furtherance of sections 9 and 15 of  
2 the Small Business Act (15 U.S.C. 638, 644) and con-  
3 cerns other than small business concerns, historically  
4 Black colleges and universities, and minority institutions  
5 in furtherance of section 7102 of the Federal Acquisition  
6 Streamlining Act of 1994 (15 U.S.C. 644 note).

7       “(d) PROCEDURES OTHER THAN COMPETITIVE PRO-  
8 CEDURES.—Procedures other than competitive procedures  
9 may be used for purchasing property and services only  
10 when the use of competitive procedures is not feasible or  
11 appropriate. Each procurement using procedures other  
12 than competitive procedures (other than a procurement  
13 for commercial items or a procurement in an amount not  
14 greater than the simplified acquisition threshold) shall be  
15 justified in writing and approved in accordance with the  
16 Federal Acquisition Regulation.

17       “(e) SIMPLIFIED PROCEDURES.—(1) In order to pro-  
18 mote efficiency and economy in contracting and to avoid  
19 unnecessary burdens for agencies and contractors, the  
20 Federal Acquisition Regulation shall provide for special  
21 simplified procedures for purchases of property and serv-  
22 ices for amounts not greater than the simplified acqui-  
23 sition threshold.

24       “(2)(A) The Administrator of General Services shall  
25 prescribe regulations that provide special simplified proce-

1 dures for acquisitions of leasehold interests in real prop-  
2 erty at rental rates that do not exceed the simplified acqui-  
3 sition threshold.

4 “(B) For purposes of subparagraph (A), the rental  
5 rate or rates under a multiyear lease do not exceed the  
6 simplified acquisition threshold if the average annual  
7 amount of the rent payable for the period of the lease does  
8 not exceed the simplified acquisition threshold.

9 “(3) A proposed purchase or contract or for an  
10 amount above the simplified acquisition threshold may not  
11 be divided into several purchases or contracts for lesser  
12 amounts in order to use the simplified procedures required  
13 by paragraph (1).

14 “(4) In using simplified procedures, an executive  
15 agency shall ensure that competition is obtained to the ex-  
16 tent practicable consistent with the particular Government  
17 requirement.”.

18 (2) Title III of the Federal Property and Administra-  
19 tive Services Act of 1949 (41 U.S.C. 251 et seq.) is  
20 amended by inserting after section 303L a new section—

21 (A) the designation and heading for which is as  
22 follows:

23 **“SEC. 303M. MERIT-BASED SELECTION.”;**

24 and

1 (B) the text of which consists of subsection (h)  
2 of section 303 of such Act, as in effect on the day  
3 before the date of the enactment of this Act, modi-  
4 fied—

5 (i) by striking out the subsection designa-  
6 tion and the subsection heading;

7 (ii) in paragraphs (2)(A), (3), and (4), by  
8 striking out “subsection” and inserting in lieu  
9 thereof “section” each place it appears;

10 (iii) in paragraph (2)(C), by striking out  
11 “paragraph (1)” and inserting in lieu thereof  
12 “subsection (a)”;

13 (iv) by redesignating paragraphs (1), (2),  
14 (3), and (4) as subsections (a), (b), (c), and  
15 (d), respectively; and

16 (v) in subsection (b) (as so redesignated),  
17 by redesignating subparagraphs (A), (B), and  
18 (C) as paragraphs (1), (2), and (3), respec-  
19 tively.

20 (3) The table of contents for the Federal Property  
21 and Administrative Services Act of 1949 (contained in sec-  
22 tion 1(b)) is amended—

23 (A) by striking out the item relating to section  
24 303 and inserting in lieu thereof the following:

“Sec. 303. Contracts: competition requirements.”; and

1 (B) by inserting after the item relating to sec-  
2 tion 303L the following new item:

“Sec. 303M. Merit-based selection.”.

3 (c) REVISIONS TO PROCUREMENT NOTICE PROVI-  
4 SIONS.—Section 18 of the Office of Federal Procurement  
5 Policy Act (41 U.S.C. 416) is amended—

6 (1) in subsection (a)—

7 (A) in subparagraph (B) of paragraph  
8 (1)—

9 (i) by striking out “subsection (f)—”  
10 and all that follows through the end of the  
11 subparagraph and inserting in lieu thereof  
12 “subsection (b); and”; and

13 (ii) by inserting after “property or  
14 services” the following: “for a price ex-  
15 pected to exceed \$10,000 but not to exceed  
16 \$25,000”;

17 (B) by striking out paragraph (4); and

18 (C) by redesignating paragraphs (5) and  
19 (6) as paragraphs (4) and (5), respectively; and  
20 (2) in subsection (b)(4)—

21 (A) by striking out “all”; and

22 (B) by striking out “(as appropriate)  
23 which shall be considered by the agency”.

1 (d) REPEAL OF DUPLICATIVE PROVISIONS.—Section  
2 8 of the Small Business Act (15 U.S.C. 637) is amend-  
3 ed—

4 (1) by striking out subsections (e), (f), (g), (h),  
5 and (i); and

6 (2) by redesignating subsection (j) as sub-  
7 section (e).

8 (e) EXECUTIVE AGENCY RESPONSIBILITIES.—(1)  
9 Section 16 of the Office of Federal Procurement Policy  
10 Act (41 U.S.C. 414) is amended—

11 (A) by striking out “achieve” in the matter pre-  
12 ceding paragraph (1) and inserting in lieu thereof  
13 “promote”; and

14 (B) by amending paragraph (1) to read as fol-  
15 lows:

16 “(1) to implement maximum practicable com-  
17 petition in the procurement of property or services  
18 by the executive agency by establishing policies, pro-  
19 cedures, and practices that are consistent with the  
20 need to efficiently fulfill the Government’s require-  
21 ments;”.

22 (2) Section 20 of such Act (41 U.S.C. 418) is amend-  
23 ed in subsection (a)(2)(A) by striking out “serving in a  
24 position authorized for such executive agency on the date

1 of enactment of the Competition in Contracting Act of  
2 1984”.

3 **SEC. 102. DEFINITION RELATING TO COMPETITION RE-**  
4 **QUIREMENTS.**

5 (a) DEFINITION.—Paragraph (6) of section 4 of the  
6 Office of Federal Procurement Policy Act (41 U.S.C. 403)  
7 is amended to read as follows:

8 “(6) The term ‘maximum practicable competi-  
9 tion’, when used with respect to a procurement,  
10 means that a maximum number of responsible or  
11 verified sources (consistent with the particular Gov-  
12 ernment requirement) are permitted to submit  
13 sealed bids or competitive proposals on the procure-  
14 ment.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) OFFICE OF FEDERAL PROCUREMENT POL-  
17 ICY ACT.—The Office of Federal Procurement Policy  
18 Act is further amended—

19 (A) in section 4(5), by striking out “full  
20 and open” and inserting “maximum prac-  
21 ticable”; and

22 (B) in section 20, by striking out “full and  
23 open” and inserting in lieu thereof “maximum  
24 practicable” each place it appears in subsection

1 (b)(1), subsection (b)(3)(A), subsection  
2 (b)(4)(C), and subsection (c);

3 (2) TITLE 10.—Title 10, United States Code, is  
4 amended—

5 (A) in section 2302(2), by striking out  
6 “pursuant to full and open competition” and in-  
7 serting in lieu thereof “using maximum prac-  
8 ticable competition”;

9 (B) in section 2323(e)(3), by striking out  
10 “less than full and open” and inserting in lieu  
11 thereof “procedures other than”; and

12 (C) in each of the following sections, by  
13 striking out “full and open” and inserting in  
14 lieu thereof “maximum practicable”:

15 (i) Section 2302(3).

16 (ii) Section 2305(a)(1)(A)(i).

17 (iii) Section 2305(a)(1)(A)(iii).

18 (iv) Section 2323(i)(3)(A).

19 (3) FEDERAL PROPERTY AND ADMINISTRATIVE  
20 SERVICES ACT.—Title III of the Federal Property  
21 and Administrative Services Act of 1949 (41 U.S.C.  
22 251 et seq.) is amended—

23 (A) in section 309(b), by striking out  
24 “pursuant to full and open competition” and in-

serting in lieu thereof “using maximum practicable competition”; and

(B) in each of the following sections, by striking out “full and open” and inserting in lieu thereof “maximum practicable”:

(i) Section 303A(a)(1)(A).

(ii) Section 303A(a)(1)(C).

(iii) Section 304B(a)(2)(B).

(iv) Section 309(c)(4).

(4) OTHER LAWS.—(A) Section 7102 of the Federal Acquisition Streamlining Act of 1994 (108 Stat. 3367; 15 U.S.C. 644 note) is amended in subsection (a)(1)(A) by striking out “less than full and open competition” and inserting in lieu thereof “procedures other than competitive procedures”.

(B) Section 15(l) of the Small Business Act (15 U.S.C. 644(l)) is amended in paragraph (1) and in paragraph (2)(A) by striking out “full and open” and inserting in lieu thereof “maximum practicable” each place it appears.

**SEC. 103. CONTRACT SOLICITATION AMENDMENTS.**

(a) ARMED SERVICES ACQUISITIONS.—Section 2305 of title 10, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking out subparagraph (B); and



1 (B) by redesignating subparagraph (C) as  
2 subparagraph (B) and in that subparagraph by  
3 striking out “subparagraphs (A) and (B)” and  
4 inserting in lieu thereof “subparagraph (A)”;  
5 and

6 (2) in subsection (b)(4)(A)(i), by striking out  
7 “all” and inserting in lieu thereof “the”.

8 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section  
9 303A of the Federal Property and Administrative Services  
10 Act of 1949 (41 U.S.C. 253a) is amended—

11 (A) by striking out paragraph (2); and

12 (B) by redesignating paragraph (3) as para-  
13 graph (2) and in that paragraph by striking out  
14 “paragraphs (1) and (2)” and inserting in lieu  
15 thereof “paragraph (1)”.

16 (2) Section 303B(d)(1)(A) of such Act (41 U.S.C.  
17 253b) is amended by striking out “all” and inserting in  
18 lieu thereof “the”.

19 **SEC. 104. PREAWARD DEBRIEFINGS.**

20 (a) ARMED SERVICES ACQUISITIONS.—Section  
21 2305(b) of title 10, United States Code, is amended—

22 (1) by striking out subparagraph (F) of para-  
23 graph (5);

24 (2) by redesignating paragraph (6) as para-  
25 graph (8); and

1           (3) by inserting after paragraph (5) the follow-  
2           ing new paragraphs:

3           “(6)(A) When the contracting officer excludes  
4           an offeror submitting a competitive proposal from  
5           the competitive range (or otherwise excludes such an  
6           offeror from further consideration prior to the final  
7           source selection decision), the excluded offeror may  
8           request in writing, within three days after the date  
9           on which the excluded offeror receives notice of its  
10          exclusion, a debriefing prior to award. The contract-  
11          ing officer shall make every effort to debrief the un-  
12          successful offeror as soon as practicable and may  
13          refuse the request for a debriefing if it is not in the  
14          best interests of the Government to conduct a de-  
15          briefing at that time.

16          “(B) The contracting officer is required to de-  
17          brief an excluded offeror in accordance with para-  
18          graph (5) of this section only if that offeror re-  
19          quested and was refused a preaward debriefing  
20          under subparagraph (A) of this paragraph.

21          “(C) The debriefing conducted under this sub-  
22          section shall include—

23                  “(i) the executive agency’s evaluation of  
24                  the significant elements in the offeror’s offer;

1           “(ii) a summary of the rationale for the  
2           offeror’s exclusion; and

3           “(iii) reasonable responses to relevant  
4           questions posed by the debriefed offeror as to  
5           whether source selection procedures set forth in  
6           the solicitation, applicable regulations, and  
7           other applicable authorities were followed by the  
8           executive agency.

9           “(D) The debriefing conducted pursuant to this  
10          subsection may not disclose the number or identity  
11          of other offerors and shall not disclose information  
12          about the content, ranking, or evaluation of other  
13          offerors’ proposals.

14          “(7) The contracting officer shall include a  
15          summary of any debriefing conducted under para-  
16          graph (5) or (6) in the contract file.”.

17          (b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B  
18          of the Federal Property and Administrative Services Act  
19          of 1949 (41 U.S.C. 253b) is amended—

20                 (1) by striking out paragraph (6) of subsection  
21                 (e);

22                 (2) by redesignating subsections (f), (g), (h),  
23                 and (i) as subsections (h), (i), (j), and (k), respec-  
24                 tively; and

1           (3) by inserting after subsection (e) the follow-  
2           ing new subsections:

3           “(f)(1) When the contracting officer excludes an  
4           offeror submitting a competitive proposal from the com-  
5           petitive range (or otherwise excludes such an offeror from  
6           further consideration prior to the final source selection de-  
7           cision), the excluded offeror may request in writing, within  
8           3 days after the date on which the excluded offeror re-  
9           ceives notice of its exclusion, a debriefing prior to award.  
10          The contracting officer shall make every effort to debrief  
11          the unsuccessful offeror as soon as practicable and may  
12          refuse the request for a debriefing if it is not in the best  
13          interests of the Government to conduct a debriefing at  
14          that time.

15          “(2) The contracting officer is required to debrief an  
16          excluded offeror in accordance with subsection (e) of this  
17          section only if that offeror requested and was refused a  
18          preaward debriefing under paragraph (1) of this sub-  
19          section.

20          “(3) The debriefing conducted under this subsection  
21          shall include—

22                  “(A) the executive agency’s evaluation of the  
23                  significant elements in the offeror’s offer;

24                  “(B) a summary of the rationale for the  
25                  offeror’s exclusion; and

1           “(C) reasonable responses to relevant questions  
2           posed by the debriefed offeror as to whether source  
3           selection procedures set forth in the solicitation, ap-  
4           plicable regulations, and other applicable authorities  
5           were followed by the executive agency.

6           “(4) The debriefing conducted pursuant to this sub-  
7           section may not disclose the number or identity of other  
8           offerors and shall not disclose information about the con-  
9           tent, ranking, or evaluation of other offerors’ proposals.

10          “(g) The contracting officer shall include a summary  
11          of the any debriefing conducted under subsection (e) or  
12          (f) in the contract file.”.

13   **SEC. 105. CONTRACT TYPES.**

14          (a) ARMED SERVICES ACQUISITIONS.—(1) Section  
15   2306 of title 10, United States Code, is amended—

16                (A) by inserting before the period at the end of  
17                subsection (a) the following: “, based on market con-  
18                ditions, established commercial practice (if any) for  
19                the product or service being acquired, and sound  
20                business judgment”;

21                (B) by striking out subsections (b), (d), (e), (f),  
22                and (h); and

23                (C) by redesignating subsection (g) as sub-  
24                section (b).

1       (2) The heading of such section is amended to read  
2 as follows:

3 **“§ 2306. Contract types”.**

4       (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section  
5 304 of the Federal Property and Administrative Services  
6 Act of 1949 (41 U.S.C. 254) is amended—

7           (A) by inserting before the period at the end of  
8 the first sentence of subsection (a) the following: “,  
9 based on market conditions, established commercial  
10 practice (if any) for the product or service being ac-  
11 quired, and sound business judgment”; and

12           (B) by striking out “Every contract award” in  
13 the second sentence of subsection (a) and all that  
14 follows through the end of the section.

15       (2) The heading of such section is amended to read  
16 as follows:

17 **“SEC. 304. CONTRACT TYPES.”.**

18       (c) CONFORMING REPEALS.—(1) Sections 4540,  
19 7212, and 9540 of title 10, United States Code, are re-  
20 pealed.

21       (2) The table of sections at the beginning of chapter  
22 433 of such title is amended by striking out the item relat-  
23 ing to section 4540.

1       (3) The table of sections at the beginning of chapter  
2 631 of such title is amended by striking out the item relat-  
3 ing to section 7212.

4       (4) The table of sections at the beginning of chapter  
5 933 of such title is amended by striking out the item relat-  
6 ing to section 9540.

7       (d) CIVIL WORKS AUTHORITY.—(1) Chapter 137 of  
8 title 10, United States Code, is amended by adding at the  
9 end the following new section:

10 **“§ 2332. Contracts for architectural and engineering**  
11 **services and construction design**

12       “The Secretary of Defense and the Secretaries of the  
13 military departments may enter into contracts for archi-  
14 tectural and engineering services in connection with a mili-  
15 tary construction or family housing project or for other  
16 Department of Defense or military department purposes.  
17 Such contracts shall be awarded in accordance with the  
18 Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).”.

19       (2) The table of sections at the beginning of chapter  
20 137 of such title is amended by adding at the end the  
21 following new item:

“2332. Contracts for architectural and engineering services and construction de-  
sign.”.

22       (3) Section 2855 of such title is repealed. The table  
23 of sections at the beginning of chapter 169 of such title

1 is amended by striking out the item relating to such sec-  
2 tion.

3 **SEC. 106. CONTRACTOR PERFORMANCE.**

4 (a) REQUIREMENT FOR SYSTEM.—The Office of Fed-  
5 eral Procurement Policy Act (41 U.S.C. 401 et seq.) is  
6 amended by adding at the end the following new section:

7 **“SEC. 35. CONTRACTOR PERFORMANCE.**

8 “(a) VERIFICATION AUTHORIZED.—The Federal Ac-  
9 quisition Regulation shall provide a contractor verification  
10 system for the procurement of particular property or serv-  
11 ices that are procured by executive agencies on a repetitive  
12 basis. Under the system, the head of an executive agen-  
13 cy—

14 “(1) shall use competitive procedures to verify  
15 contractors as eligible for contracts to furnish such  
16 property or services; and

17 “(2) shall award verifications on the basis of  
18 the relative efficiency and effectiveness of the busi-  
19 ness practices, level of quality, and demonstrated  
20 contract performance of the responding contractors  
21 with regard to the particular property or services.

22 “(b) PROCUREMENT FROM VERIFIED CONTRAC-  
23 TORS.—The Federal Acquisition Regulation shall provide  
24 procedures under which the head of an executive agency  
25 may enter into a contract for a procurement of property



1 or services referred to in subsection (a) on the basis of  
2 a competition among contractors verified with respect to  
3 such property or services pursuant to that subsection.

4 “(c) TERMINATION OF VERIFICATION.—The Federal  
5 Acquisition Regulation shall provide procedures under  
6 which the head of an executive agency—

7 “(1) may provide for the termination of a ver-  
8 ification awarded a contractor under this section  
9 upon the expiration of a period specified by the head  
10 of an executive agency; and

11 “(2) may revoke a verification awarded a con-  
12 tractor under this section upon a determination that  
13 the quality of performance of the contractor does not  
14 meet standards applied by the head of the executive  
15 agency as of the time of the revocation decision.”.

16 (b) REPEALS.—Section 2319 of title 10, United  
17 States Code, is repealed. Section 303C of the Federal  
18 Property and Administrative Services Act of 1949 (41  
19 U.S.C. 253c) is repealed.

20 (c) CLERICAL AMENDMENTS.—(1) The table of con-  
21 tents for the Office of Federal Procurement Policy Act  
22 (contained in section 1(b)) is amended by adding at the  
23 end the following new item:

“Sec. 35. Contractor performance.”.

1       (2) The table of sections at the beginning of chapter  
2 137 of title 10, United States Code, is amended by strik-  
3 ing out the item relating to section 2319.

4       (3) The table of contents for the Federal Property  
5 and Administrative Services Act of 1949 (contained in sec-  
6 tion 1(b)) is amended by striking out the item relating  
7 to section 303C.

## 8       **TITLE II—COMMERCIAL ITEMS**

### 9       **SEC. 201. COMMERCIAL ITEM EXCEPTION TO REQUIRE-** 10                               **MENT FOR COST OR PRICING DATA AND IN-** 11                               **FORMATION LIMITATIONS.**

12       (a) ARMED SERVICES ACQUISITIONS.—(1) Sub-  
13 sections (b), (c), and (d) of section 2306a of title 10,  
14 United States Code, are amended to read as follows:

15       “(b) EXCEPTIONS.—

16               “(1) IN GENERAL.—Submission of cost or pric-  
17 ing data shall not be required under subsection (a)  
18 in the case of a contract, a subcontract, or modifica-  
19 tion of a contract or subcontract—

20               “(A) for which the price agreed upon is  
21 based on—

22                       “(i) adequate price competition; or

23                       “(ii) prices set by law or regulation;

24               “(B) for the acquisition of a commercial  
25 item; or

1           “(C) in an exceptional case when the head  
2           of the procuring activity, without delegation, de-  
3           termines that the requirements of this section  
4           may be waived and justifies in writing the rea-  
5           sons for such determination.

6           “(2) MODIFICATIONS OF CONTRACTS AND SUB-  
7           CONTRACTS FOR COMMERCIAL ITEMS.—In the case  
8           of a modification of a contract or subcontract for a  
9           commercial item that is not covered by the exception  
10          on the submission of cost or pricing data in para-  
11          graph (1)(A) or (1)(B), submission of cost or pricing  
12          data shall not be required under subsection (a) if—

13               “(A) the contract or subcontract being  
14               modified is a contract or subcontract for which  
15               submission of cost or pricing data may not be  
16               required by reason of paragraph (1)(A) or  
17               (1)(B); and

18               “(B) the modification would not change  
19               the contract or subcontract, as the case may be,  
20               from a contract or subcontract for the acquisi-  
21               tion of a commercial item to a contract or sub-  
22               contract for the acquisition of an item other  
23               than a commercial item.

24          “(c) AUTHORITY TO REQUIRE COST OR PRICING  
25          DATA ON BELOW-THRESHOLD CONTRACTS.—(1) Subject

1 to paragraph (2), when cost or pricing data are not re-  
2 quired to be submitted by subsection (a) for a contract,  
3 subcontract, or modification of a contract or subcontract,  
4 such data may nevertheless be required to be submitted  
5 by the head of the procuring activity, but only if the head  
6 of the procuring activity determines that such data are  
7 necessary for the evaluation by the agency of the reason-  
8 ableness of the price of the contract, subcontract, or modi-  
9 fication of a contract or subcontract. In any case in which  
10 the head of the procuring activity requires such data to  
11 be submitted under this subsection, the head of the pro-  
12 curing activity shall justify in writing the reason for such  
13 requirement.

14 “(2) The head of the procuring activity may not re-  
15 quire certified cost or pricing data to be submitted under  
16 this paragraph for any contract or subcontract, or modi-  
17 fication of a contract or subcontract, covered by the excep-  
18 tions in subparagraph (A) or (B) of subsection (b)(1).

19 “(3) The head of a procuring activity may not dele-  
20 gate functions under this paragraph.

21 “(d) LIMITATIONS ON OTHER INFORMATION.—The  
22 Federal Acquisition Regulation shall include the following:

23 “(1) Provisions concerning the types of infor-  
24 mation that contracting officers may consider in de-  
25 termining whether the price of a procurement to the

1 Government is fair and reasonable when certified  
2 cost or pricing data are not required to be submitted  
3 under this section, including appropriate information  
4 on the prices at which the same item or similar  
5 items have previously been sold that is adequate for  
6 evaluating the reasonableness of the price of the pro-  
7 posed contract or subcontract for the procurement.

8 “(2) Reasonable limitations on requests for  
9 sales data relating to commercial items.

10 “(3) A requirement that a contracting officer  
11 shall, to the maximum extent practicable, limit the  
12 scope of any request for information relating to com-  
13 mercial items from an offeror to only that informa-  
14 tion that is in the form regularly maintained by the  
15 offeror in commercial operations.

16 “(4) A statement that any information received  
17 relating to commercial items that is exempt from  
18 disclosure under section 552(b) of title 5 shall not  
19 be disclosed by the Federal Government.”.

20 (2) Section 2306a of such title is further amended—

21 (A) by striking out subsection (h); and

22 (B) by redesignating subsection (i) as sub-  
23 section (h).

24 (3) Section 2375 of title 10, United States Code, is  
25 amended by striking out subsection (c).

1 (b) CIVILIAN AGENCY ACQUISITIONS.—(1) Sub-  
2 sections (b), (c), and (d) of section 304A of the Federal  
3 Property and Administrative Services Act of 1949 (41  
4 U.S.C. 254b) are amended to read as follows:

5 “(b) EXCEPTIONS.—

6 “(1) IN GENERAL.—Submission of cost or pric-  
7 ing data shall not be required under subsection (a)  
8 in the case of a contract, a subcontract, or a modi-  
9 fication of a contract or subcontract—

10 “(A) for which the price agreed upon is  
11 based on—

12 “(i) adequate price competition; or

13 “(ii) prices set by law or regulation;

14 “(B) for the acquisition of a commercial  
15 item; or

16 “(C) in an exceptional case when the head  
17 of the procuring activity, without delegation, de-  
18 termines that the requirements of this section  
19 may be waived and justifies in writing the rea-  
20 sons for such determination.

21 “(2) MODIFICATIONS OF CONTRACTS AND SUB-  
22 CONTRACTS FOR COMMERCIAL ITEMS.—In the case  
23 of a modification of a contract or subcontract for a  
24 commercial item that is not covered by the exception  
25 on the submission of cost or pricing data in para-

1 graph (1)(A) or (1)(B), submission of cost or pricing  
2 data shall not be required under subsection (a) if—

3 “(A) the contract or subcontract being  
4 modified is a contract or subcontract for which  
5 submission of cost or pricing data may not be  
6 required by reason of paragraph (1)(A) or  
7 (1)(B); and

8 “(B) the modification would not change  
9 the contract or subcontract, as the case may be,  
10 from a contract or subcontract for the acquisition  
11 of a commercial item to a contract or sub-  
12 contract for the acquisition of an item other  
13 than a commercial item.

14 “(c) AUTHORITY TO REQUIRE COST OR PRICING  
15 DATA ON BELOW-THRESHOLD CONTRACTS.—(1) Subject  
16 to paragraph (2), when cost or pricing data are not re-  
17 quired to be submitted by subsection (a) for a contract,  
18 subcontract, or modification of a contract or subcontract,  
19 such data may nevertheless be required to be submitted  
20 by the head of the procuring activity, but only if the head  
21 of the procuring activity determines that such data are  
22 necessary for the evaluation by the agency of the reason-  
23 ableness of the price of the contract, subcontract, or modi-  
24 fication of a contract or subcontract. In any case in which  
25 the head of the procuring activity requires such data to

1 be submitted under this subsection, the head of the pro-  
2 curing activity shall justify in writing the reason for such  
3 requirement.

4 “(2) The head of the procuring activity may not re-  
5 quire certified cost or pricing data to be submitted under  
6 this paragraph for any contract or subcontract, or modi-  
7 fication of a contract or subcontract, covered by the excep-  
8 tions in subparagraph (A) or (B) of subsection (b)(1).

9 “(3) The head of a procuring activity may not dele-  
10 gate the functions under this paragraph.

11 “(d) LIMITATIONS ON OTHER INFORMATION.—The  
12 Federal Acquisition Regulation shall include the following:

13 “(1) Provisions concerning the types of infor-  
14 mation that contracting officers may consider in de-  
15 termining whether the price of a procurement to the  
16 Government is fair and reasonable when certified  
17 cost or pricing data are not required to be submitted  
18 under this section, including appropriate information  
19 on the prices at which the same item or similar  
20 items have previously been sold that is adequate for  
21 evaluating the reasonableness of the price of the pro-  
22 posed contract or subcontract for the procurement.

23 “(2) Reasonable limitations on requests for  
24 sales data relating to commercial items.



1           “(3) A requirement that a contracting officer  
2       shall, to the maximum extent practicable, limit the  
3       scope of any request for information relating to com-  
4       mercial items from an offeror to only that informa-  
5       tion that is in the form regularly maintained by the  
6       offeror in commercial operations.

7           “(4) A statement that any information received  
8       relating to commercial items that is exempt from  
9       disclosure under section 552(b) of title 5 shall not  
10      be disclosed by the Federal Government.”.

11      (2) Section 304A of such Act is further amended—

12           (A) by striking out subsection (h); and

13           (B) by redesignating subsection (i) as sub-  
14      section (h).

15      **SEC. 202. APPLICATION OF SIMPLIFIED PROCEDURES TO**  
16                                      **COMMERCIAL ITEMS.**

17      (a) ARMED SERVICES ACQUISITIONS.—Section  
18      2304(e)(1) of title 10, United States Code, as added by  
19      section 101(a), is amended by inserting after “special sim-  
20      plified procedures” the following: “for purchases of com-  
21      mercial items and”.

22      (b) CIVILIAN AGENCY ACQUISITIONS.—Section  
23      303(e)(1) of the Federal Property and Administrative  
24      Services Act of 1949 (41 U.S.C. 253), as added by section  
25      101(b), is amended by inserting after “special simplified

1 procedures” the following: “for purchases of commercial  
2 items and”.

3 (c) SIMPLIFIED NOTICE.—Section 18 of the Office  
4 of Federal Procurement Policy Act (41 U.S.C. 416) is  
5 amended in subsection (a)(5) (as redesignated by section  
6 101(d))—

7 (1) by striking out “limited”; and

8 (2) by inserting before “submission” the follow-  
9 ing: “issuance of solicitations and the”.

10 **SEC. 203. AMENDMENT TO DEFINITION OF COMMERCIAL**  
11 **ITEMS.**

12 Section 4(12)(F) of the Office of Federal Procure-  
13 ment Policy Act (41 U.S.C. 403(12)(F)) is amended by  
14 striking out “catalog”.

15 **SEC. 204. INAPPLICABILITY OF COST ACCOUNTING STAND-**  
16 **ARDS TO CONTRACTS AND SUBCONTRACTS**  
17 **FOR COMMERCIAL ITEMS.**

18 Subparagraph (B) of section 26(f)(2) of the Office  
19 of Federal Procurement Policy Act (41 U.S.C. 422(f)(2))  
20 is amended—

21 (1) by striking out clause (i) and inserting in  
22 lieu thereof the following:

23 “(i) Contracts or subcontracts for the acquisi-  
24 tion of commercial items.”; and

25 (2) by striking out clause (iii).

1 **TITLE III—ADDITIONAL REFORM**  
2 **PROVISIONS**

3 **SEC. 301. GOVERNMENT RELIANCE ON THE PRIVATE**  
4 **SECTOR.**

5 (a) GOVERNMENT RELIANCE ON THE PRIVATE SEC-  
6 TOR.—The Office of Federal Procurement Policy Act (41  
7 U.S.C. 401 et seq.) is amended by inserting after section  
8 16 the following new section:

9 **“SEC. 17. GOVERNMENT RELIANCE ON THE PRIVATE**  
10 **SECTOR.**

11 “It has been and continues to be the policy of the  
12 Federal Government to rely on commercial sources to sup-  
13 ply the products and services the Federal Government  
14 needs.”.

15 (b) CLERICAL AMENDMENT.—The table of contents  
16 for the Office of Federal Procurement Policy Act (con-  
17 tained in section 1(b)) is amended by inserting after the  
18 item relating to section 16 the following new item:

“Sec. 17. Government reliance on the private sector.”.

19 **SEC. 302. ELIMINATION OF CERTAIN CERTIFICATION RE-**  
20 **QUIREMENTS.**

21 (a) ELIMINATION OF CERTAIN STATUTORY CERTIFI-  
22 CATION REQUIREMENTS.—(1)(A) Section 2410 of title 10,  
23 United States Code, is amended—

1 (i) in the heading, by striking out “: **certifi-**  
2 **cation**”; and

3 (ii) in subsection (a)—

4 (I) in the heading, by striking out “CER-  
5 TIFICATION”;

6 (II) by striking out “unless” and all that  
7 follows through “that—” and inserting in lieu  
8 thereof “unless—”; and

9 (III) in paragraph (2), by striking out “to  
10 the best of that person’s knowledge and belief”.

11 (B) The item relating to section 2410 in the table  
12 of sections at the beginning of chapter 141 of such title  
13 is amended to read as follows:

“Sec. 2410. Requests for equitable adjustment or other relief.”.

14 (2) Section 2410b of title 10, United States Code,  
15 is amended in paragraph (2) by striking out “certification  
16 and”.

17 (3) Section 1352(b)(2) of title 31, United States  
18 Code, is amended—

19 (A) by striking out subparagraph (C); and

20 (B) by inserting “and” after the semicolon at  
21 the end of subparagraph (A).

22 (4) Section 5152 of the Drug-Free Workplace Act of  
23 1988 (41 U.S.C. 701) is amended—

1 (A) in subsection (a)(1), by striking out “has  
2 certified to the contracting agency that it will” and  
3 inserting in lieu thereof “agrees to”;

4 (B) in subsection (a)(2), by striking out “con-  
5 tract includes a certification by the individual” and  
6 inserting in lieu thereof “individual agrees”; and

7 (C) in subsection (b)(1)—

8 (i) by striking out subparagraph (A);

9 (ii) by redesignating subparagraph (B) as  
10 subparagraph (A) and in that subparagraph by  
11 striking out “such certification by failing to  
12 carry out”; and

13 (iii) by redesignating subparagraph (C) as  
14 subparagraph (B).

15 (b) ELIMINATION OF CERTAIN REGULATORY CER-  
16 TIFICATION REQUIREMENTS.—

17 (1) CURRENT CERTIFICATION REQUIRE-  
18 MENTS.—Not later than 210 days after the date of  
19 the enactment of this Act, any certification required  
20 of contractors or offerors by the Federal Acquisition  
21 Regulation or an executive agency procurement reg-  
22 ulation that is not specifically imposed by statute  
23 shall be removed by the Administrator for Federal  
24 Procurement Policy from the Federal Acquisition  
25 Regulation or such agency regulation unless—

1 (A) written justification for such certifi-  
2 cation is provided to the Administrator by the  
3 Federal Acquisition Regulatory Council (in the  
4 case of a certification in the Federal Acquisition  
5 Regulation) or the head of an executive agency  
6 (in the case of a certification in an executive  
7 agency procurement regulation); and

8 (B) the Administrator approves in writing  
9 the retention of such certification.

10 (2) FUTURE CERTIFICATION REQUIREMENTS.—

11 (A) Section 29 of the Office of Federal Procurement  
12 Policy Act (41 U.S.C. 425) is amended—

13 (i) by amending the heading to read as fol-  
14 lows:

15 **“SEC. 22. CONTRACT CLAUSES AND CERTIFICATIONS.”;**

16 (ii) by inserting “(a) NONSTANDARD CON-  
17 TRACT CLAUSES.—” before “The Federal Ac-  
18 quisition”; and

19 (iii) by adding at the end the following new  
20 subsection:

21 **“(b) PROHIBITION ON CERTIFICATION REQUIRE-**  
22 **MENTS.—**A requirement for a certification by a contractor  
23 or offeror may not be included in the Federal Acquisition  
24 Regulation or an executive agency procurement regulation  
25 unless—

1 “(1) the certification is specifically imposed by  
2 statute; or

3 “(2) written justification for such certification  
4 is provided to the Administrator for Federal Pro-  
5 curement Policy by the Federal Acquisition Regu-  
6 latory Council (in the case of a certification in the  
7 Federal Acquisition Regulation) or the head of an  
8 executive agency (in the case of a certification in an  
9 executive agency procurement regulation), and the  
10 Administrator approves in writing the inclusion of  
11 such certification.”.

12 (B) The item relating to section 29 in the table  
13 of contents for the Office of Federal Procurement  
14 Policy Act (contained in section 1(b)) (41 U.S.C.  
15 401 note) is amended to read as follows:

“Sec. 29. Contract clauses and certifications.”.

16 **SEC. 303. AMENDMENT TO COMMENCEMENT AND EXPIRA-**  
17 **TION OF AUTHORITY TO CONDUCT CERTAIN**  
18 **TESTS OF PROCUREMENT PROCEDURES.**

19 Subsection (j) of section 5061 of the Federal Acquisi-  
20 tion Streamlining Act of 1994 (41 U.S.C. 413 note) is  
21 amended to read as follows:

22 “(j) COMMENCEMENT AND EXPIRATION OF AUTHOR-  
23 ITY.—The authority to conduct a test under subsection  
24 (a) in an agency and to award contracts under such a test  
25 shall take effect on August 1, 1995, and shall expire on

1 August 1, 2000. Contracts entered into before such au-  
2 thority expires in an agency pursuant to a test shall re-  
3 main in effect, notwithstanding the expiration of the au-  
4 thority to conduct the test under this section.”.

5 **SEC. 304. INTERNATIONAL COMPETITIVENESS.**

6 (a) REPEAL OF PROVISION RELATING TO RESEARCH,  
7 DEVELOPMENT, AND PRODUCTION COSTS.—Section 21(e)  
8 of the Arms Export Control Act (22 U.S.C. 2761(e)) is  
9 amended—

10 (1) by inserting “and” after the semicolon at  
11 the end of paragraph (1)(A);

12 (2) by striking out subparagraph (B) of para-  
13 graph (1);

14 (3) by redesignating subparagraph (C) of para-  
15 graph (1) as subparagraph (B);

16 (4) by striking out paragraph (2); and

17 (5) by redesignating paragraph (3) as para-  
18 graph (2).

19 (b) EFFECTIVE DATE.—The amendments made by  
20 subsection (a) shall be effective with respect to sales agree-  
21 ments pursuant to sections 21 and 22 of the Arms Export  
22 Control Act (22 U.S.C. 2761 and 2762) entered into on  
23 or after the date of the enactment of this Act.



1 **SEC. 305. PROCUREMENT INTEGRITY.**

2 (a) AMENDMENT OF PROCUREMENT INTEGRITY PRO-  
3 VISION.—Section 27 of the Office of Federal Procurement  
4 Policy Act (41 U.S.C. 423) is amended to read as follows:

5 **“SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING**  
6 **CONTRACTOR BID OR PROPOSAL INFORMA-**  
7 **TION OR SOURCE SELECTION INFORMATION.**

8 “(a) PROHIBITION ON DISCLOSING PROCUREMENT  
9 INFORMATION.—(1) A person described in paragraph (2)  
10 shall not, other than as provided by law, knowingly and  
11 willfully disclose contractor bid or proposal information or  
12 source selection information before the award of a Federal  
13 agency procurement contract to which the information  
14 relates.

15 “(2) Paragraph (1) applies to any person who—

16 “(A) is a present or former officer or employee  
17 of the United States, or a person who is acting or  
18 has acted for or on behalf of, or who is advising or  
19 has advised the United States with respect to, a  
20 Federal agency procurement; and

21 “(B) by virtue of that office, employment, or re-  
22 lationship has or had access to contractor bid or pro-  
23 posal information or source selection information.

24 “(b) PROHIBITION ON OBTAINING PROCUREMENT  
25 INFORMATION.—A person shall not, other than as pro-  
26 vided by law, knowingly and willfully obtain contractor bid

1 or proposal information or source selection information be-  
2 fore the award of a Federal agency procurement contract  
3 to which the information relates.

4 “(c) PROHIBITION ON DISCLOSING OR OBTAINING  
5 PROCUREMENT INFORMATION IN CONNECTION WITH A  
6 PROTEST.—(1) A person shall not, other than as provided  
7 by law, knowingly and willfully violate the terms of a pro-  
8 tective order described in paragraph (2) by disclosing or  
9 obtaining contractor bid or proposal information or source  
10 selection information related to the procurement contract  
11 concerned.

12 “(2) Paragraph (1) applies to any protective order  
13 issued by the Comptroller General or the board of contract  
14 appeals of the General Services Administration in connec-  
15 tion with a protest against the award or proposed award  
16 of a Federal agency procurement contract.

17 “(d) PENALTIES AND ADMINISTRATIVE ACTIONS.—

18 “(1) CRIMINAL PENALTIES.—

19 “(A) Whoever engages in conduct con-  
20 stituting an offense under subsection (a), (b),  
21 or (c) shall be imprisoned for not more than  
22 one year or fined as provided under title 18,  
23 United States Code, or both.

1           “(B) Whoever engages in conduct con-  
2           stituting an offense under subsection (a), (b),  
3           or (c) for the purpose of either—

4                   “(i) exchanging the information cov-  
5                   ered by such subsection for anything of  
6                   value, or

7                   “(ii) obtaining or giving anyone a  
8                   competitive advantage in the award of a  
9                   Federal agency procurement contract,  
10           shall be imprisoned for not more than five years  
11           or fined as provided under title 18, United  
12           States Code, or both.

13           “(2) CIVIL PENALTIES.—The Attorney General  
14           may bring a civil action in the appropriate United  
15           States district court against any person who engages  
16           in conduct constituting an offense under subsection  
17           (a), (b), or (c). Upon proof of such conduct by a  
18           preponderance of the evidence, the person is subject  
19           to a civil penalty. An individual who engages in such  
20           conduct is subject to a civil penalty of not more than  
21           \$50,000 for each violation plus twice the amount of  
22           compensation which the individual received or of-  
23           fered for the prohibited conduct. An organization  
24           that engages in such conduct is subject to a civil  
25           penalty of not more than \$500,000 for each violation

1 plus twice the amount of compensation which the  
2 organization received or offered for the prohibited  
3 conduct.

4 “(3) ADMINISTRATIVE ACTIONS.—(A) If a Fed-  
5 eral agency receives information that a contractor or  
6 a person has engaged in conduct constituting an of-  
7 fense under subsection (a), (b), or (c), the Federal  
8 agency shall consider taking one or more of the fol-  
9 lowing actions, as appropriate:

10 “(i) Cancellation of the Federal agency  
11 procurement, if a contract has not yet been  
12 awarded.

13 “(ii) Rescission of a contract with respect  
14 to which—

15 “(I) the contractor or someone acting  
16 for the contractor has been convicted for  
17 an offense under subsection (a), (b), or (c),  
18 or

19 “(II) the head of the agency that  
20 awarded the contract has determined,  
21 based upon clear and convincing evidence,  
22 that the contractor or someone acting for  
23 the contractor has engaged in conduct con-  
24 stituting such an offense.

1           “(iii) Initiation of suspension or debarment  
2           proceedings for the protection of the Govern-  
3           ment in accordance with procedures in the Fed-  
4           eral Acquisition Regulation.

5           “(iv) Initiation of adverse personnel action,  
6           pursuant to the procedures in chapter 75 of  
7           title 5, United States Code, or other applicable  
8           law or regulation.

9           “(B) If a Federal agency rescinds a contract  
10          pursuant to subparagraph (A)(ii), the United States  
11          is entitled to recover, in addition to any penalty pre-  
12          scribed by law, the amount expended under the con-  
13          tract.

14          “(C) For purposes of any suspension or debar-  
15          ment proceedings initiated pursuant to subpara-  
16          graph (A)(iii), engaging in conduct constituting an  
17          offense under subsection (a), (b), or (c) affects the  
18          present responsibility of a Government contractor or  
19          subcontractor.

20          “(e) DEFINITIONS.—As used in this section:

21               “(1) The term ‘contractor bid or proposal infor-  
22               mation’ means any of the following information sub-  
23               mitted to a Federal agency as part of or in connec-  
24               tion with a bid or proposal to enter into a Federal  
25               agency procurement contract, if that information has

1 not been previously made available to the public or  
2 disclosed publicly:

3 “(A) Cost or pricing data (as defined by  
4 section 2306a(i) of title 10, United States  
5 Code, with respect to procurements subject to  
6 that section, and section 304A(i) of Federal  
7 Property and Administrative Services Act of  
8 1949 (41 U.S.C. 254b(i), with respect to pro-  
9 curements subject to that section).

10 “(B) Indirect costs and direct labor rates.

11 “(C) Proprietary information about manu-  
12 facturing processes, operations, or techniques  
13 marked by the contractor in accordance with  
14 applicable law or regulation.

15 “(D) Information marked by the contrac-  
16 tor as ‘contractor bid or proposal information’,  
17 in accordance with applicable law or regulation.

18 “(2) The term ‘source selection information’  
19 means any of the following information prepared for  
20 use by a Federal agency for the purpose of evaluat-  
21 ing a bid or proposal to enter into a Federal agency  
22 procurement contract, if that information has not  
23 been previously made available to the public or dis-  
24 closed publicly:

1           “(A) Bid prices submitted in response to a  
2           Federal agency solicitation for sealed bids, or  
3           lists of those bid prices before public bid open-  
4           ing.

5           “(B) Proposed costs or prices submitted in  
6           response to a Federal agency solicitation, or  
7           lists of those proposed costs or prices.

8           “(C) Source selection plans.

9           “(D) Technical evaluation plans.

10          “(E) Technical evaluations of proposals.

11          “(F) Cost or price evaluations of propos-  
12          als.

13          “(G) Competitive range determinations  
14          that identify proposals that have a reasonable  
15          chance of being selected for award of a con-  
16          tract.

17          “(H) Rankings of bids, proposals, or com-  
18          petitors.

19          “(I) The reports and evaluations of source  
20          selection panels, boards, or advisory councils.

21          “(J) Other information marked as ‘source  
22          selection information’ based on a case-by-case  
23          determination by the head of the agency, his  
24          designee, or the contracting officer that its dis-  
25          closure would jeopardize the integrity or suc-

1           successful completion of the Federal agency pro-  
2           curement to which the information relates.

3           “(3) The term ‘Federal agency’ has the mean-  
4           ing provided such term in section 3 of the Federal  
5           Property and Administrative Services Act of 1949  
6           (40 U.S.C. 472).

7           “(4) The term ‘Federal agency procurement’  
8           means the acquisition (by using competitive proce-  
9           dures and awarding a contract) of goods or services  
10          (including construction) from non-Federal sources  
11          by a Federal agency using appropriated funds.

12          “(5) The term ‘contracting officer’ means a  
13          person who, by appointment in accordance with ap-  
14          plicable regulations, has the authority to enter into  
15          a Federal agency procurement contract on behalf of  
16          the Government and to make determinations and  
17          findings with respect to such a contract.

18          “(6) The term ‘protest’ means a written objec-  
19          tion by an interested party to the award or proposed  
20          award of a Federal agency procurement contract,  
21          pursuant to title IV of the Federal Acquisition Re-  
22          form Act of 1995.

23          “(f) LIMITATION ON PROTESTS.—No person may file  
24          a protest against the award or proposed award of a Fed-  
25          eral agency procurement contract alleging an offense



1 under subsection (a), (b), or (c), of this section, nor may  
2 the Comptroller General or the board of contract appeals  
3 of the General Services Administration consider such an  
4 allegation in deciding a protest, unless that person re-  
5 ported to the Federal agency responsible for the procure-  
6 ment information that the person believed constituted evi-  
7 dence of the offense no later than 14 days after the person  
8 first discovered the possible offense.

9 “(g) SAVINGS PROVISIONS.—This section does not—

10 “(1) restrict the disclosure of information to, or  
11 its receipt by, any person or class of persons author-  
12 ized, in accordance with applicable agency regula-  
13 tions or procedures, to receive that information;

14 “(2) restrict a contractor from disclosing its  
15 own bid or proposal information or the recipient  
16 from receiving that information;

17 “(3) restrict the disclosure or receipt of infor-  
18 mation relating to a Federal agency procurement  
19 after it has been canceled by the Federal agency be-  
20 fore contract award unless the Federal agency plans  
21 to resume the procurement;

22 “(4) authorize the withholding of information  
23 from, nor restrict its receipt by, Congress, a commit-  
24 tee or subcommittee of Congress, the Comptroller

1 General, a Federal agency, or an inspector general  
2 of a Federal agency;

3 “(5) authorize the withholding of information  
4 from, nor restrict its receipt by, any board of con-  
5 tract appeals of a Federal agency or the Comptroller  
6 General in the course of a protest against the award  
7 or proposed award of a Federal agency procurement  
8 contract; or

9 “(6) limit the applicability of any requirements,  
10 sanctions, contract penalties, and remedies estab-  
11 lished under any other law or regulation.”.

12 (b) REPEALS.—The following provisions of law are  
13 repealed:

14 (1) Sections 2397, 2397a, 2397b, and 2397c of  
15 title 10, United States Code.

16 (2) Section 33 of the Federal Energy Adminis-  
17 tration Act of 1974 (15 U.S.C. 789).

18 (3) Section 281 of title 18, United States Code.

19 (4) Subsection (c) of section 32 of the Office of  
20 Federal Procurement Policy Act (41 U.S.C. 428).

21 (5) The first section 19 of the Federal Non-  
22 nuclear Energy Research and Development Act of  
23 1974 (42 U.S.C. 5918).

24 (c) CLERICAL AMENDMENTS.—

1           (1) The table of sections at the beginning of  
2       chapter 141 of title 10, United States Code, is  
3       amended by striking out the items relating to sec-  
4       tions 2397, 2397a, 2397b, and 2397c.

5           (2) The table of sections at the beginning of  
6       chapter 15 of title 18, United States Code, is  
7       amended by striking out the item relating to section  
8       281.

9           (3) Section 32 of the Office of Federal Procure-  
10      ment Policy Act (41 U.S.C. 428) is amended by re-  
11      designating subsections (d), (e), (f), and (g) as sub-  
12      sections (c), (d), (e), and (f), respectively.

13   **SEC. 306. FURTHER ACQUISITION STREAMLINING PROVI-**  
14                                   **SIONS.**

15      (a) PURPOSE OF OFFICE OF FEDERAL PROCURE-  
16      MENT POLICY.—(1) Section 5(a) of the Office of Federal  
17      Procurement Policy Act (41 U.S.C. 404) is amended to  
18      read as follows:

19          “(a) To promote economy, efficiency, and effective-  
20      ness in the procurement of property and services by the  
21      executive branch of the Federal Government, there shall  
22      be an Office of Federal Procurement Policy (hereinafter  
23      referred to as the ‘Office’) in the Office of Management  
24      and Budget to provide overall direction of Government-

1 wide procurement policies, regulations, procedures, and  
2 forms for executive agencies.”.

3 (2) Sections 2 and 3 of such Act (41 U.S.C. 401 and  
4 402) are repealed.

5 (b) REPEAL OF REPORT REQUIREMENT.—Section 8  
6 of the Office of Federal Procurement Policy Act (41  
7 U.S.C. 407) is repealed.

8 (c) REPEAL OF OBSOLETE PROVISIONS.—(1) Sec-  
9 tions 10 and 11 of the Office of Federal Procurement Pol-  
10 icy Act (41 U.S.C. 409 and 410) are repealed.

11 (d) CLERICAL AMENDMENTS.—The table of contents  
12 for the Office of Federal Procurement Policy Act (con-  
13 tained in section 1(b)) is amended by striking out the  
14 items relating to sections 2, 3, 8, 10, and 11.

15 **TITLE IV—STREAMLINING OF**  
16 **DISPUTE RESOLUTION**  
17 **Subtitle A—General Provisions**

18 **SEC. 401. DEFINITIONS.**

19 In this title:

20 (1) The term “Board” means the United States  
21 Board of Contract Appeals.

22 (2) The term “Board judge” means a member  
23 of the United States Board of Contract Appeals.

24 (3) The term “Chairman” means the Chairman  
25 of the United States Board of Contract Appeals.

1           (4) The term “executive agency” has the mean-  
2           ing given by section 2(2) of the Contract Disputes  
3           Act of 1978 (41 U.S.C. 601(2)).

4           (5) The term “alternative means of dispute res-  
5           olution” has the meaning given by section 571(3) of  
6           title 5, United States Code.

7           (6) The term “protest” means a written objec-  
8           tion by an interested party to any of the following:

9                   (A) A solicitation or other request by an  
10                  executive agency for offers for a contract for  
11                  the procurement of property or services.

12                  (B) The cancellation of such a solicitation  
13                  or other request.

14                  (C) An award or proposed award of such  
15                  a contract.

16                  (D) A termination or cancellation of an  
17                  award of such a contract, if the written objec-  
18                  tion contains an allegation that the termination  
19                  or cancellation is based in whole or in part on  
20                  improprieties concerning the award of the con-  
21                  tract.

22           (7) The term “interested party”, with respect  
23           to a contract or a solicitation or other request for of-  
24           fers, means an actual or prospective bidder or  
25           offeror whose direct economic interest would be af-

1        fected by the award of the contract or by failure to  
2        award the contract.

3            (8) The term “prevailing party”, with respect  
4        to a determination of the Board under subsection  
5        424(b) that a decision of a contracting officer vio-  
6        lates a statute or regulation, means a party that  
7        demonstrated such violation.

8        **Subtitle B—Establishment of the**  
9        **United States Board of Contract**  
10       **Appeals**

11       **SEC. 411. ESTABLISHMENT.**

12       There is established in the executive branch of the  
13       Government an independent establishment to be known as  
14       the United States Board of Contract Appeals.

15       **SEC. 412. MEMBERSHIP.**

16       (a) APPOINTMENT.—(1) The Board shall consist of  
17       Board judges appointed by the Chairman, without regard  
18       to political affiliation and solely on the basis of the profes-  
19       sional qualifications required to perform the duties and  
20       responsibilities of a Board judge, from a register of appli-  
21       cants maintained by the Board.

22       (2) The members of the Board shall be selected and  
23       appointed to serve in the same manner as administrative  
24       law judges appointed pursuant to section 3105 of title 5,  
25       United States Code, with an additional requirement that

1 such members shall have had not fewer than five years'  
2 experience in public contract law.

3 (3) Notwithstanding paragraph (2), the following  
4 persons shall be considered qualified to serve as Board  
5 judges:

6 (A) Any full-time member of an agency board  
7 of contract appeals serving as such on the day before  
8 the effective date of this title.

9 (B) Any person serving on the day before the  
10 effective date of this title in a position at a level of  
11 assistant general counsel or higher with authority  
12 delegated from the Comptroller General to decide  
13 bid protests under subchapter V of chapter 35 of  
14 title 31, United States Code.

15 (b) REMOVAL.—Members of the Board shall be sub-  
16 ject to removal in the same manner as administrative law  
17 judges, as provided in section 7521 of title 5, United  
18 States Code.

19 (c) COMPENSATION.—Compensation for the Chair-  
20 man and all other members of the Board shall be deter-  
21 mined under section 5273a of title 5, United States Code.

22 **SEC. 413. CHAIRMAN.**

23 (a) DESIGNATION.—(1) The Chairman shall be des-  
24 igned by the President to serve for a term of five years.  
25 The President shall select the Chairman from among sit-

1 ting Board judges each of whom has had at least five years  
2 of service—

3 (A) as a member of an agency board of contract  
4 appeals; or

5 (B) in a position at a level of assistant general  
6 counsel or higher with authority delegated from the  
7 Comptroller General to decide bid protests under  
8 subchapter V of chapter 35 of title 31, United  
9 States Code (as in effect on the day before the effec-  
10 tive date of this title).

11 (2) A Chairman may continue to serve after the expi-  
12 ration of the Chairman's term until a successor has taken  
13 office. A Chairman may be reappointed any number of  
14 times.

15 (b) RESPONSIBILITIES.—The Chairman shall be re-  
16 sponsible on behalf of the Board for the executive and ad-  
17 ministrative operation of the Board, including functions  
18 of the Board with respect to the following:

19 (1) The selection, appointment, and fixing of  
20 the compensation of such personnel, pursuant to  
21 part III of title 5, United States Code, as the Chair-  
22 man considers necessary or appropriate, including a  
23 Clerk of the Board, a General Counsel, and clerical  
24 and legal assistance for Board judges.



1           (2) The supervision of personnel employed by or  
2 assigned to the Board, and the distribution of work  
3 among such personnel.

4           (3) The response to any request that may be  
5 made by Congress or the Office of Management and  
6 Budget.

7           (4) The allocation of funds among the various  
8 functions of the Board.

9           (5) The entering into and performance of such  
10 contracts, leases, cooperative agreements, or other  
11 similar transactions with public agencies and private  
12 organizations and persons, and the making of such  
13 payments, as the Chairman considers necessary or  
14 appropriate to carry out functions vested in the  
15 Board.

16           (6) The operation of an Office of the Clerk of  
17 the Board, including the receipt of all filings made  
18 with the Board, the assignment of cases, and the  
19 maintenance of all records of the Board.

20           (7) The acquisition, operation, and maintenance  
21 of such automatic data processing resources as may  
22 be needed by the Board.

23           (8) The prescription of such rules and regula-  
24 tions as the Chairman considers necessary or appro-

1       prate for the administration and management of the  
2       Board.

3       (c) VICE CHAIRMEN.—The Chairman may designate  
4 up to four other Board judges as Vice Chairmen. The  
5 Chairman may divide the Board into two or more divi-  
6 sions, and, if such division is made, shall assign a Vice  
7 Chairman to head each division. The Vice Chairmen, in  
8 the order designated by the Chairman, shall act in the  
9 place and stead of the Chairman during the absence of  
10 the Chairman.

11 **SEC. 414. RULEMAKING AUTHORITY.**

12       (a) IN GENERAL.—The Board may establish—

13               (1) such procedural rules and regulations as are  
14       necessary to the exercise of its functions, including  
15       internal rules for the assignment of cases; and

16               (2) statements of policy of general applicability  
17       with respect to its functions.

18       (b) PROHIBITION ON REVIEW BY OTHER AGENCY OR  
19 PERSON.—Rules and regulations established by the Board  
20 (including forms which are a part thereof) shall not be  
21 subject to review by any other agency or person (including  
22 the Administrator of Information and Regulatory Affairs,  
23 pursuant to chapter 35 of title 44, United States Code)  
24 in advance of publication.

1 **SEC. 415. LITIGATION AUTHORITY.**

2 Except as provided in section 518 of title 28, United  
3 States Code, relating to litigation before the Supreme  
4 Court, attorneys designated by the Chairman may appear  
5 for, and represent the Board in, any civil action brought  
6 in connection with any function carried out by the Board.

7 **SEC. 416. SEAL OF BOARD.**

8 The Chairman shall cause a seal of office to be made  
9 for the Board of such design as the Board shall approve.  
10 Judicial notice shall be taken of such seal.

11 **SEC. 417. AUTHORIZATION OF APPROPRIATIONS.**

12 There are authorized to be appropriated for fiscal  
13 year 1997 and each succeeding fiscal year such sums as  
14 may be necessary to carry out the provisions of this title  
15 and to enable the Board to perform its functions. Funds  
16 appropriate pursuant to this section shall remain available  
17 until expended.

18 **Subtitle C—Functions of United**  
19 **States Board of Contract Appeals**

20 **SEC. 421. ALTERNATIVE DISPUTE RESOLUTION SERVICES.**

21 (a) REQUIREMENT TO PROVIDE SERVICES UPON RE-  
22 QUEST.—The Board shall provide alternative means of  
23 dispute resolution for any disagreement regarding a con-  
24 tract or prospective contract upon the request of all par-  
25 ties to the disagreement.

1 (b) PERSONNEL QUALIFIED TO ACT.—Each Board  
2 judge and each attorney employed by the Board shall be  
3 considered to be qualified to act for the purpose of con-  
4 ducting alternative means of dispute resolution under this  
5 section.

6 (c) SERVICES TO BE PROVIDED WITHOUT  
7 CHARGE.—Any services provided by the Board or any  
8 Board judge or employee pursuant to this section shall be  
9 provided without charge.

10 (d) RECUSAL OF CERTAIN PERSONNEL UPON RE-  
11 QUEST.—In the event that a matter which is presented  
12 to the Board for alternative means of dispute resolution,  
13 pursuant to this section, later becomes the subject of for-  
14 mal proceedings before the Board, any Board judge or em-  
15 ployee who was involved in the alternative means shall,  
16 if requested by any party to the formal proceeding, take  
17 no part in that proceeding.

18 **SEC. 422. ALTERNATIVE DISPUTE RESOLUTION OF DIS-**  
19 **PUTES AND PROTESTS SUBMITTED TO**  
20 **BOARD.**

21 With reasonable promptness after the submission to  
22 the Board of a contract dispute under section 423 or a  
23 bid protest under section 424, a Board judge to whom the  
24 contract dispute or protest is assigned shall request the  
25 parties to meet with a Board judge, or an attorney em-

1 ployed by the Board, for the purpose of attempting to re-  
2 solve the dispute or protest through alternative means of  
3 dispute resolution. Formal proceedings in the appeal shall  
4 then be suspended until such time as any party or a Board  
5 judge to whom the dispute or protest is assigned deter-  
6 mines that alternative means of dispute resolution are not  
7 appropriate for resolution of the dispute or protest.

8 **SEC. 423. CONTRACT DISPUTES.**

9       The Board shall have jurisdiction as provided by sec-  
10 tion 8(a) of the Contract Disputes Act of 1978 (41 U.S.C.  
11 601–613).

12 **SEC. 424. PROTESTS.**

13       (a) REVIEW REQUIRED UPON REQUEST.—Upon re-  
14 quest of an interested party in connection with any pro-  
15 curement conducted by any executive agency, the Board  
16 shall review, as provided in this section, any decision by  
17 a contracting officer alleged to violate a statute or regula-  
18 tion. The authority of the Board to conduct such review  
19 shall include the authority to review regulations to deter-  
20 mine their consistency with applicable statutes. A decision  
21 or order of the Board pursuant to this section shall not  
22 be subject to interlocutory appeal or review.

23       (b) STANDARD OF REVIEW.—In deciding a protest,  
24 the Board may consider all evidence that is relevant to  
25 the decision under protest. It shall accord a presumption

1 of correctness to all facts found and determinations made  
2 by the contracting officer whose decision is being pro-  
3 tested. The protester may rebut this presumption by show-  
4 ing, by a preponderance of the evidence, that a finding  
5 or determination was incorrect. The Board may find that  
6 a decision by a contracting officer violates a statute or  
7 regulation for any of the reasons stated in section 706(2)  
8 of title 5, United States Code.

9 (c) DETERMINATION OF WHETHER TO SUSPEND AU-  
10 THORITY TO CONDUCT PROCUREMENT IN PROTEST  
11 FILED BEFORE CONTRACT AWARD.—(1) When a protest  
12 under this section is filed before the award of a contract  
13 in a protested procurement, the Board, at the request of  
14 an interested party and within 10 days after the submis-  
15 sion of the protest, shall hold a hearing to determine  
16 whether the Board should suspend the authority of the  
17 executive agency involved (or its head) to conduct such  
18 procurement until the Board can decide the protest.

19 (2) The Board shall suspend the authority of the ex-  
20 ecutive agency (or its head) unless the agency concerned  
21 establishes that—

22 (A) absent action by the Board, contract award  
23 is likely to occur within 30 days after the hearing;  
24 and

1 (B) urgent and compelling circumstances which  
2 significantly affect interests of the United States will  
3 not permit waiting for the decision of the Board.

4 (3) A suspension under paragraph (2) shall not pre-  
5 clude the executive agency concerned from continuing the  
6 procurement process up to but not including award of the  
7 contract unless the Board determines such action is not  
8 in the best interests of the United States.

9 (d) DETERMINATION OF WHETHER TO SUSPEND  
10 AUTHORITY TO CONDUCT PROCUREMENT IN PROTEST  
11 FILED AFTER CONTRACT AWARD.—(1) If, with respect  
12 to an award of a contract, the Board receives notice of  
13 a protest under this section within the period described  
14 in paragraph (2), the Board shall, at the request of an  
15 interested party, hold a hearing to determine whether the  
16 Board should suspend the authority of the executive agen-  
17 cy involved (or its head) to conduct such procurement  
18 until the Board can decide the protest.

19 (2) The period referred to in paragraph (1) is the  
20 period beginning on the date on which the contract is  
21 awarded and ending at the end of the later of—

22 (A) the tenth day after the date of contract  
23 award; or

1 (B) the fifth day after the debriefing date of-  
2 ferred to an unsuccessful offeror for any debriefing  
3 that is requested and, when requested, is required.

4 (3) The Board shall hold the requested hearing with-  
5 in 5 days after the date of the filing of the protest or,  
6 in the case of a request for debriefing, within 5 days after  
7 the later of the date of the filing of the protest or the  
8 date of the debriefing.

9 (4) The Board shall suspend the procurement author-  
10 ity of the executive agency involved (or its head) to acquire  
11 any goods or services under the contract which are not  
12 previously delivered and accepted unless such agency es-  
13 tablishes that urgent and compelling circumstances which  
14 significantly affect interests of the United States will not  
15 permit waiting for the decision of the Board.

16 (e) PROCEDURES.—

17 (1) PROCEEDINGS AND DISCOVERY.—The  
18 Board shall conduct proceedings and allow such dis-  
19 covery as may be required for the expeditious, fair,  
20 and reasonable resolution of the protest. The Board  
21 shall limit discovery to material which is relevant to  
22 the grounds of protest or to such affirmative de-  
23 fenses as the executive agency involved, or any inter-  
24 venor supporting the agency, may raise.



1           (2) PRIORITY.—Subject to any deadlines im-  
2 posed pursuant to section 9(a) of the Contract Dis-  
3 putes Act of 1978 (41 U.S.C. 608(a)), the Board  
4 shall give priority over contract disputes and alter-  
5 native dispute services to protests filed under this  
6 section. Except as provided in paragraph (3), the  
7 Board shall issue its final decision within 65 days  
8 after the date of the filing of the protest, unless the  
9 Chairman determines that the specific and unique  
10 circumstances of the protest require a longer period,  
11 in which case the Board shall issue such decision  
12 within the longer period determined by the Chair-  
13 man. An amendment that adds a new ground of pro-  
14 test should be resolved, to the maximum extent prac-  
15 ticable, within the time limits established for resolu-  
16 tion of the initial protest.

17           (3) THRESHOLD.—Any protest in which the an-  
18 ticipated value of the contract award that will result  
19 from the protested procurement, as estimated by the  
20 executive agency involved, is less than \$1,000,000  
21 shall be considered under simplified rules of proce-  
22 dure. These rules shall provide that discovery in  
23 such protests shall be in writing only. Such protests  
24 shall be decided by a single Board judge, whose deci-  
25 sion shall be final and conclusive and shall not be set

1       aside except in cases of fraud. The Board shall issue  
2       its final decision in each such protest within 35 days  
3       after the date of the filing of the protest.

4           (4) CALCULATION OF TIME FOR ADR.—In cal-  
5       culating time for purposes of paragraph (2) or (3)  
6       of this subsection, any days during which proceed-  
7       ings are suspended for the purpose of attempting to  
8       resolve the protest by alternative means of dispute  
9       resolution, up to a maximum of 20 days, shall not  
10      be counted.

11          (5) DISMISSAL OF FRIVOLOUS PROTESTS.—The  
12      Board may dismiss a protest that the Board deter-  
13      mines is frivolous or which, on its face, does not  
14      state a valid basis for protest.

15          (6) PAYMENT OF COSTS FOR FRIVOLOUS PRO-  
16      TESTS.—(A) If the Board expressly finds that a pro-  
17      test or a portion of a protest is frivolous or does not  
18      state on its face a valid basis for protest, the Board  
19      shall recommend that the protester or other inter-  
20      ested party who joins the protest be liable to the  
21      United States for payment of the costs described in  
22      subparagraph (B) unless—

23              (i) special circumstances would make such  
24      payment unjust; or

1           (ii) the protester obtains documents or  
2           other information after the protest is filed with  
3           the Board that establishes that the protest or  
4           a portion of the protest is frivolous or does not  
5           state on its face a valid basis for protest, and  
6           the protester then promptly withdraws the pro-  
7           test or portion of the protest.

8           (B) The costs referred to in subparagraph (A)  
9           are all of the costs incurred by the United States of  
10          reviewing the protest, or of reviewing that portion of  
11          the protest for which the finding is made, including  
12          the fees and other expenses (as defined in section  
13          2412(d)(2)(A) of title 28, United States Code) in-  
14          curred by the United States in defending the pro-  
15          test.

16          (f) DECISIONS AND CORRECTIVE ACTIONS ON PRO-  
17          TESTS.—(1) In making a decision on protests filed under  
18          this section, the Board shall accord due weight to the goals  
19          of economic and efficient procurement, and shall take due  
20          account of the rule of prejudicial error.

21          (2) If the Board determines that a decision of a con-  
22          tracting officer violates a statute or regulation, the Board  
23          may order the agency (or its head) to take such corrective  
24          action as the Board considers appropriate. Corrective ac-  
25          tion includes recommending that the Federal agency—

1           (A) refrain from exercising any of its options  
2       under the contract;

3           (B) recompute the contract immediately;

4           (C) issue a new solicitation;

5           (D) terminate the contract;

6           (E) award a contract consistent with the re-  
7       quirements of such statute and regulation;

8           (F) implement any combination of recommenda-  
9       tions under subparagraphs (A), (B), (C), (D), and  
10      (E); or

11          (G) implement such other recommendations as  
12      the Board determines to be necessary in order to  
13      promote compliance with procurement statutes and  
14      regulations.

15      (3) If the Board orders corrective action after the  
16      contract award, the affected contract shall be presumed  
17      valid as to all goods or services delivered and accepted  
18      under the contract before the corrective action was  
19      ordered.

20      (4) Any agreement that provides for the dismissal of  
21      a protest and involves a direct or indirect expenditure of  
22      appropriated funds shall be submitted to the Board and  
23      shall be made a part of the public record (subject to any  
24      protective order considered appropriate by the Board) be-  
25      fore dismissal of the protest.

1 (g) AUTHORITY TO DECLARE ENTITLEMENT TO  
2 COSTS.—(1)(A) Whenever the Board determines that a  
3 decision of a contracting officer violates a statute or regu-  
4 lation, it may, in accordance with section 1304 of title 31,  
5 United States Code, further declare an appropriate pre-  
6 vailing party to be entitled to the costs of—

7 (i) filing and pursuing the protest, including  
8 reasonable attorneys' fees and consultant and expert  
9 witness fees, and

10 (ii) bid and proposal preparation.

11 (B) No party (other than a small business concern  
12 (within the meaning of section 3(a) of the Small Business  
13 Act)) may be declared entitled under this paragraph to  
14 costs for—

15 (i) consultants and expert witness fees that ex-  
16 ceed the highest rate of compensation for expert wit-  
17 nesses paid by the Federal Government, or

18 (ii) attorneys' fees that exceed \$150 per hour  
19 unless the Board, on a case by case basis, deter-  
20 mines that an increase in the cost of living or a spe-  
21 cial factor, such as the limited availability of quali-  
22 fied attorneys for the proceedings involved, justifies  
23 a higher fee.

24 (2) Payment of amounts due from an agency under  
25 paragraph (1) or under the terms of a settlement agree-

1 ment under subsection (e)(4) shall be made from the ap-  
2 propriation made by section 1304 of title 31, United  
3 States Code, for the payment of judgments. The executive  
4 agency concerned shall reimburse that appropriation ac-  
5 count out of funds available for the procurement.

6 (h) APPEALS.—The final decision of the Board may  
7 be appealed as set forth in section 8(d)(1) of the Contract  
8 Disputes Act of 1978 by the head of the executive agency  
9 concerned and by any interested party, including inter-  
10 ested parties who intervene in any protest filed under this  
11 section.

12 (i) ADDITIONAL RELIEF.—Nothing contained in this  
13 section shall affect the power of the Board to order any  
14 additional relief which it is authorized to provide under  
15 any statute or regulation.

16 (j) NONEXCLUSIVITY OF REMEDIES.—Nothing con-  
17 tained in this section shall affect the right of any inter-  
18 ested party to file a protest with the contracting agency  
19 or to file an action in the United States Court of Federal  
20 Claims or in a United States district court.

21 **SEC. 425. APPLICABILITY TO CONTRACTS FOR COMMER-**  
22 **CIAL ITEMS.**

23 Notwithstanding section 34 of the Office of Federal  
24 Procurement Policy Act (41 U.S.C. 430), the authority

1 conferred on the Board by this title is applicable to con-  
2 tracts for the procurement of commercial items.

3 **Subtitle D—Repeal of Other Stat-**  
4 **utes Authorizing Administrative**  
5 **Protests**

6 **SEC. 431. REPEALS.**

7 (a) GSBCA PROVISIONS.—Subsection (f) of the  
8 Brooks Automatic Data Processing Act (section 111 of the  
9 Federal Property and Administrative Services Act of  
10 1949; 40 U.S.C. 759) is repealed.

11 (b) GAO PROVISIONS.—Subchapter V of chapter 35  
12 of title 31, United States Code (31 U.S.C. 3551–3556)  
13 is repealed.

14 **Subtitle E—Transfers and Transi-**  
15 **tional, Savings, and Conforming**  
16 **Provisions**

17 **SEC. 441. TRANSFER AND ALLOCATION OF APPROPRIA-**  
18 **TIONS AND PERSONNEL.**

19 (a) TRANSFER.—The personnel employed in connec-  
20 tion with, and the assets, liabilities, contracts, property,  
21 records, and unexpended balance of appropriations, au-  
22 thorizations, allocations, and other funds employed, held,  
23 used, arising from, available to, or to be made available  
24 in connection with the functions vested by law in the  
25 Comptroller General pursuant to subchapter V of chapter

1 35 of title 31, United States Code, and in the boards of  
2 contract appeals established pursuant to section 8 of the  
3 Contract Disputes Act of 1978 (41 U.S.C. 607) (as in ef-  
4 fect on the day before the effective date of this Act), shall  
5 be transferred to the Board for appropriate allocation by  
6 the Chairman.

7 (b) EFFECT ON PERSONNEL.—Personnel transferred  
8 pursuant to this title shall not be separated or reduced  
9 in classification or compensation for one year after such  
10 transfer, except for cause.

11 (c) REGULATIONS.—(1) The Board shall prescribe  
12 regulations for the release of competing employees in a  
13 reduction in force that gives due effect to—

14 (A) efficiency or performance ratings;

15 (B) military preference; and

16 (C) tenure of employment.

17 (2) In prescribing the regulations, the Board shall  
18 provide for military preference in the same manner as set  
19 forth in subchapter I of chapter 35 of title 5, United  
20 States Code.

21 **SEC. 442. TERMINATIONS AND SAVINGS PROVISIONS.**

22 (a) TERMINATION OF BOARDS OF CONTRACT AP-  
23 PEALS.—On the effective date of this title, the boards of  
24 contract appeals established pursuant to section 8 of the  
25 Contract Disputes Act of 1978 (41 U.S.C. 607) (as in ef-



1   fect on the day before the effective date of this Act) shall  
2   terminate.

3       (b) SAVINGS PROVISION FOR CONTRACT DISPUTE  
4   MATTERS PENDING BEFORE BOARDS.—The provisions of  
5   this title shall not affect any proceedings (other than bid  
6   protests pending before the board of contract appeals of  
7   the General Services Administration) pending on the effec-  
8   tive date of this Act before any board of contract appeals  
9   described in subsection (a). Such proceedings shall be con-  
10   tinued by the Board, and orders which were issued in any  
11   such proceeding by any board of contract appeals shall  
12   continue in effect until modified, terminated, superseded,  
13   or revoked by the Board, by a court of competent jurisdic-  
14   tion, or by operation of law.

15       (c) BID PROTEST TRANSITION PROVISIONS.—(1) No  
16   protest may be submitted to the Comptroller General pur-  
17   suant to section 3553(a) of title 31, United States Code,  
18   or to the board of contract appeals for the General Serv-  
19   ices Administration pursuant to the Brooks Automatic  
20   Data Processing Act (40 U.S.C. 759) on or after the effec-  
21   tive date of this Act.

22       (2) The provisions repealed by section 401 shall con-  
23   tinue to apply to proceedings pending on the effective date  
24   of this title before the board of contract appeals of the  
25   General Services Administration and the Comptroller Gen-

1 eral pursuant to those provisions, until the board or the  
2 Comptroller General determines such proceedings have  
3 been completed.

4 **SEC. 443. CONTRACT DISPUTE AUTHORITY OF BOARD.**

5 (a) Section 2 of the Contract Disputes Act of 1978  
6 (41 U.S.C. 601) is amended by striking out paragraph (6)  
7 and inserting in lieu thereof the following:

8 “(6) the term ‘Board’ means the United States  
9 Board of Contract Appeals; and”.

10 (b) Section 6(c) of the Contract Disputes Act of 1978  
11 (41 U.S.C. 605(c)) is amended—

12 (1) in paragraph (4)—

13 (A) by striking out “the agency board of  
14 contract appeals” and inserting in lieu thereof  
15 “the United States Board of Contract Ap-  
16 peals”; and

17 (B) by striking out “the board” and insert-  
18 ing in lieu thereof “the Board”; and

19 (2) in paragraph (6)—

20 (A) by striking out “an agency board of  
21 contract appeals” and inserting in lieu thereof  
22 “the United States Board of Contract Ap-  
23 peals”; and

24 (B) by striking out “agency board” and in-  
25 serting in lieu thereof “the Board”.

1 (c) Section 7 of the Contract Disputes Act of 1978  
2 (41 U.S.C. 606) is amended by striking out “an agency  
3 board of contract appeals” and inserting in lieu thereof  
4 “the United States Board of Contract Appeals”.

5 (d) Section 8 of the Contract Disputes Act of 1978  
6 (41 U.S.C. 607) is amended—

7 (1) by amending the heading to read as follows:

8 “UNITED STATES BOARD OF CONTRACT APPEALS”;

9 (2) by striking out subsections (a), (b), and (c);

10 (3) in subsection (d)—

11 (A) by striking out the first sentence and

12 inserting in lieu thereof the following:

13 “The United States Board of Contract Appeals shall have  
14 jurisdiction to decide any appeal from a decision of a con-  
15 tracting officer of any executive agency relative to a con-  
16 tract made by that agency.”; and

17 (B) in the second sentence, by striking out

18 “the agency board” and inserting in lieu thereof

19 “the Board”;

20 (4) in subsection (e), by striking out “An agen-

21 cy board” and inserting in lieu thereof “The United

22 States Board of Contract Appeals”;

23 (5) in subsection (f), by striking out “each

24 agency board” and inserting in lieu thereof “the

25 United States Board of Contract Appeals”;

26 (6) in subsection (g)—

1 (A) in the first sentence of paragraph (1),  
2 by striking out “an agency board of contract  
3 appeals” and inserting in lieu thereof “the  
4 United States Board of Contract Appeals”;

5 (B) by striking out paragraph (2); and

6 (C) by redesignating paragraph (3) as  
7 paragraph (2);

8 (7) by striking out subsections (h) and (i); and

9 (8) by redesignating subsections (d), (e), (f),  
10 and (g) (as amended) as subsections (a), (b), (c),  
11 and (d), respectively.

12 (e) Section 9 of the Contract Disputes Act of 1978  
13 (41 U.S.C. 608) is amended—

14 (1) in subsection (a), by striking out “each  
15 agency board” and inserting in lieu thereof “the  
16 United States Board of Contract Appeals”; and

17 (2) in subsection (b), by striking out “the agen-  
18 cy board” and inserting in lieu thereof “the Board”.

19 (f) Section 10 of the Contract Disputes Act of 1978  
20 (41 U.S.C. 609) is amended—

21 (1) in subsection (a)—

22 (A) in the first sentence of paragraph

23 (1)—

1 (i) by striking out “Except as pro-  
2 vided in paragraph (2), and in” and insert-  
3 ing in lieu thereof “In”; and

4 (ii) by striking out “an agency board”  
5 and inserting in lieu thereof “the United  
6 States Board of Contract Appeals”;

7 (B) by striking out paragraph (2); and

8 (C) by redesignating paragraph (3) as  
9 paragraph (2), and in that paragraph, by strik-  
10 ing out “or (2)”;

11 (2) in subsection (b), by striking out “any  
12 agency board” and “the agency board” and inserting  
13 in lieu of each “the Board”;

14 (3) in subsection (c), by striking out “an agen-  
15 cy board” and “the agency board” and inserting in  
16 lieu of each “the Board”; and

17 (4) in subsection (d), by striking out “one or  
18 more agency boards” and “or among the agency  
19 boards involved” and inserting in lieu of each “the  
20 Board”.

21 (g) Section 11 of the Contract Disputes Act of 1978  
22 (41 U.S.C. 610) is amended—

23 (1) in the first sentence, by striking out “an  
24 agency board of contract appeals” and inserting in

1        lieu thereof “the United States Board of Contract  
2        Appeals”; and

3            (2) in the second sentence, by striking out “the  
4        agency board through the Attorney General; or upon  
5        application by the board of contract appeals of the  
6        Tennessee Valley Authority” and inserting in lieu  
7        thereof “the Board”.

8        (h) Section 13 of the Contract Disputes Act of 1978  
9        (41 U.S.C. 612) is amended—

10            (1) in subsection (b), by striking out “an agen-  
11        cy board of contract appeals” and inserting in lieu  
12        thereof “the United States Board of Contract Ap-  
13        peals”; and

14            (2) in subsection (d)(2), by striking out “by the  
15        board of contract appeals for” and inserting in lieu  
16        thereof “by the Board from”.

17        **SEC. 444. REFERENCES TO AGENCY BOARDS OF CONTRACT**  
18            **APPEALS.**

19        Any reference to an agency board of contract appeals  
20        in any provision of law or in any rule, regulation, or other  
21        paper of the United States shall be treated as referring  
22        to the United States Board of Contract Appeals.

23        **SEC. 445. CONFORMING AMENDMENTS.**

24            (a) TITLE 5.—Section 5372a of title 5, United States  
25        Code, is amended—

1           (1) in subsection (a)(1), by striking out “an  
2       agency board of contract appeals appointed under  
3       section 8 of the Contract Disputes Act of 1978” and  
4       inserting in lieu thereof “the United States Board of  
5       Contract Appeals”;

6           (2) in subsection (a)(2), by striking out “an  
7       agency board of contract appeals established pursu-  
8       ant to section 8 of the Contract Disputes Act of  
9       1978” and inserting in lieu thereof “the United  
10      States Board of Contract Appeals”; and

11          (3) in subsection (b), by striking out “an ap-  
12      peals board” each place it appears and inserting in  
13      lieu thereof “the appeals board”.

14      (b) TITLE 10.—(1) Section 2305(e) of title 10,  
15      United States Code, is amended—

16          (A) in paragraph (1), by striking out “sub-  
17      chapter V of chapter 35 of title 31” and inserting  
18      in lieu thereof “title IV of the Federal Acquisition  
19      Reform Act of 1995”; and

20          (B) by striking out paragraph (3).

21      (2) Section 2305(f) of such title is amended—

22          (A) in paragraph (1), by striking out “in sub-  
23      paragraphs (A) through (F) of subsection (b)(1) of  
24      section 3554 of title 31” and inserting in lieu there-

1 of “section 424(f)(2) of the Federal Acquisition Re-  
2 form Act of 1995”; and

3 (B) in paragraph (2), by striking out “para-  
4 graph (1) of section 3554(c) of title 31” and insert-  
5 ing in lieu thereof “section 424(g)(1)(A) of the Fed-  
6 eral Acquisition Reform Act of 1995”.

7 (c) FEDERAL PROPERTY AND ADMINISTRATIVE  
8 SERVICES ACT OF 1949.—(1) Section 303B(h) of the  
9 Federal Property and Administrative Services Act of 1949  
10 (41 U.S.C. 253b(h)) is amended—

11 (A) in paragraph (1), by striking out “sub-  
12 chapter V of chapter 35 of title 31” and inserting  
13 in lieu thereof “title IV of the Federal Acquisition  
14 Reform Act of 1995”; and

15 (B) by striking out paragraph (3).

16 (2) Section 303B(i) of such Act (41 U.S.C. 253b(i))  
17 is amended—

18 (A) in paragraph (1), by striking out “in sub-  
19 paragraphs (A) through (F) of subsection (b)(1) of  
20 section 3554 of title 31” and inserting in lieu there-  
21 of “section 424(f)(2) of the Federal Acquisition Re-  
22 form Act of 1995”; and

23 (B) in paragraph (2), by striking out “para-  
24 graph (1) of section 3554(c) of title 31” and insert-



1       ing in lieu thereof “section 424(g)(1)(A) of the Fed-  
2       eral Acquisition Reform Act of 1995”.

3       **Subtitle F—Effective Date; Interim**  
4       **Appointment and Rules**

5       **SEC. 451. EFFECTIVE DATE.**

6       This title shall take effect on October 1, 1996.

7       **SEC. 452. INTERIM APPOINTMENT.**

8       The Board judge serving as chairman of the board  
9       of contract appeals of the General Services Administration  
10      on the date of the enactment of this Act shall serve as  
11      Chairman during the two-year period beginning on the ef-  
12      fective date of this title, unless such individual resigns  
13      such position or the position otherwise becomes vacant be-  
14      fore the expiration of such period. The authority vested  
15      in the President by section 413 shall take effect upon the  
16      expiration of such two-year period or on the date such po-  
17      sition is vacated, whichever occurs earlier.

18      **SEC. 453. INTERIM RULES.**

19      (a) RULES OF PROCEDURE.—Until such date as the  
20      Board promulgates rules of procedure, the rules of proce-  
21      dure of the board of contract appeals of the General Serv-  
22      ices Administration, as in effect on the effective date of  
23      this Act, shall be the rules of procedure of the Board.

24      (b) RULES REGARDING BOARD JUDGES.—Until such  
25      date as the Board promulgates rules governing the estab-

1 lishment and maintenance of a register of eligible appli-  
 2 cants and the selection of Board judges, the rules of the  
 3 Armed Services Board of Contract Appeals governing the  
 4 establishment and maintenance of a register of eligible ap-  
 5 plicants and the selection of board members shall be the  
 6 rules of the Board governing the establishment and main-  
 7 tenance of a register of eligible applicants and the selec-  
 8 tion of Board judges, except that any provisions of the  
 9 rules of the Armed Services Board of Contract Appeals  
 10 that authorize any individual other than the chairman of  
 11 such board to select a Board judge shall have no effect.

## 12 **TITLE V—EFFECTIVE DATES** 13 **AND IMPLEMENTATION**

### 14 **SEC. 501. EFFECTIVE DATE AND APPLICABILITY.**

15 (a) **EFFECTIVE DATE.**—Except as otherwise provided  
 16 in this Act, this Act and the amendments made by this  
 17 Act shall take effect on the date of the enactment of this  
 18 Act.

19 (b) **APPLICABILITY OF AMENDMENTS.**—(1) An  
 20 amendment made by this Act shall apply, in the manner  
 21 prescribed in the final regulations promulgated pursuant  
 22 to section 502 to implement such amendment, with respect  
 23 to any solicitation that is issued, any unsolicited proposal  
 24 that is received, and any contract entered into pursuant

1 to such a solicitation or proposal, on or after the date de-  
2 scribed in paragraph (3).

3 (2) An amendment made by this Act shall also apply,  
4 to the extent and in the manner prescribed in the final  
5 regulations promulgated pursuant to section 502 to imple-  
6 ment such amendment, with respect to any matter related  
7 to—

8 (A) a contract that is in effect on the date de-  
9 scribed in paragraph (3);

10 (B) an offer under consideration on the date  
11 described in paragraph (3); or

12 (C) any other proceeding or action that is ongo-  
13 ing on the date described in paragraph (3).

14 (3) The date referred to in paragraphs (1) and (2)  
15 is the date specified in such final regulations. The date  
16 so specified shall be October 1, 1996, or any earlier date  
17 that is not within 30 days after the date on which such  
18 final regulations are published.

19 **SEC. 502. IMPLEMENTING REGULATIONS.**

20 (a) **PROPOSED REVISIONS.**—Proposed revisions to  
21 the Federal Acquisition Regulation and such other pro-  
22 posed regulations (or revisions to existing regulations) as  
23 may be necessary to implement this Act shall be published  
24 in the Federal Register not later than 210 days after the  
25 date of the enactment of this Act.

1 (b) PUBLIC COMMENT.—The proposed regulations  
2 described in subsection (a) shall be made available for  
3 public comment for a period of not less than 60 days.

4 (c) FINAL REGULATIONS.—Final regulations shall be  
5 published in the Federal Register not later than 330 days  
6 after the date of enactment of this Act.

7 (d) MODIFICATIONS.—Final regulations promulgated  
8 pursuant to this section to implement an amendment  
9 made by this Act may provide for modification of an exist-  
10 ing contract without consideration upon the request of the  
11 contractor.

12 (e) SAVINGS PROVISIONS.—(1) Nothing in this Act  
13 shall be construed to affect the validity of any action taken  
14 or any contract entered into before the date specified in  
15 the regulations pursuant to section 501(b)(3) except to the  
16 extent and in the manner prescribed in such regulations.

17 (2) Except as specifically provided in this Act, noth-  
18 ing in this Act shall be construed to require the renegoti-  
19 ation or modification of contracts in existence on the date  
20 of the enactment of this Act.

21 (3) Except as otherwise provided in this Act, a law  
22 amended by this Act shall continue to be applied according  
23 to the provisions thereof as such law was in effect on the  
24 day before the date of the enactment of this Act until—

1           (A) the date specified in final regulations imple-  
2           menting the amendment of that law (as promulgated  
3           pursuant to this section); or

4           (B) if no such date is specified in regulations,  
5           October 1, 1996.



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